



USAID
FROM THE AMERICAN PEOPLE



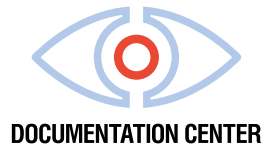
UKRAINIAN
HELSINKI
HUMAN RIGHTS
UNION

ANALYSIS OF THE STATE'S ACTIONS REGARDING THE PRISONERS OF WAR AFTER RELEASE: PROBLEMS OF ACCESS TO TREATMENT AND PSYCHOLOGICAL REHABILITATION



INFORMATION REPORT
BY UKRAINIAN HELSINKI HUMAN RIGHTS UNION
AND KHARKIV HUMAN RIGHTS PROTECTION GROUP

Kyiv 2017



USAID
FROM THE AMERICAN PEOPLE

This publication is made possible by the generous support of the American people through the United States Agency for International Development (USAID) in the framework of the Human Rights in Action Program implemented by the Ukrainian Helsinki Human Rights Union.

Opinions, conclusions and recommendations presented in this publication do not necessarily reflect the views of the USAID or the United States Government. The contents are the responsibility of the authors and UHHRU.

The American people, through the USAID, have provided economic and humanitarian assistance worldwide for 55 years. In Ukraine, USAID's assistance focuses on three areas: Health and Social Transition, Economic Growth and Democracy and Governance. USAID has provided 1.8 bln. technical and humanitarian assistance to Ukraine since 1992.

For additional information about USAID programs in Ukraine, please visit our website: ukraine.usaid.gov or our Facebook page at www.facebook.com/USAIDUkraine.

Analysis of the state's actions regarding the prisoners of war after release: problems of access to treatment and psychological rehabilitation. Information report by Ukrainian Helsinki Human Rights Union and Kharkiv Human Rights Protection Group / Andrii Gladun, Nataliia Okhotnikova, Oleg Martynenko/ Ukrainian Helsinki Human Rights Union, Kharkiv Human Rights Protection Group — Kyiv, 2017. — 12 h.

The authors express their sincere gratitude to Kharkiv Human Rights Protection Group lawyer Gennadiy Tokarev, whose experience, efforts and diligence laid foundation for documenting war crimes and enabled the drafting of this report.

CONTENTS

Foreword	4
1. Obligations of the state under the international law	5
2. Medical and psychological aid to the captives: What is guaranteed by the national law	6
3. Data and methodology	8
4. Provision of medical aid and psychological rehabilitation	9
5. Conclusions.....	13



**Arkadiy
Bushchenko**

UHHRU Executive Director



**Yevgeniy
Zakharov**

KHRPG Director

SINCE THE OUTBREAK of the armed conflict in Eastern Ukraine, according to SSU, at least 3084 persons¹ have been released from the captivity of the self-proclaimed LPR/DPR. More than 100 persons are still held in captivity². All these people faced psychological violence, many were subjected to torture or cruel treatment; human rights activists have repeatedly reported these facts. POWs are a specific category, since they often experience cruel treatment on the grounds of vengeance. Thus, the state should not settle at mere documenting of violations of international humanitarian law – it is crucial to take into account the need for rehabilitation and reintegration of persons who return to the peaceful life after captivity.

That is why in this pilot report Ukrainian Helsinki Human Rights Union and Kharkiv Human Rights Protection Group would like to draw the attention of Ukrainian society to the following questions: what does the state DO and what it SHOULD DO for those released from captivity? Can these people rely on psychological rehabilitation and medical aid?

1 DW.com: Double ordeal for DPR/LPR captives: <http://dw.com/p/2Un1Z>

2 Radio Freedom: 131 person is being held captive by the militants - Tandit http://24tv.ua/skilki_ukrayintsiv_zalishayetsya_v_poloni_boyovikiv_zyavilis_onovleni_dani_n661666

1. Obligations of the state under the international law

ACCORDING to Art.21 of the Resolution of the UN General Assembly A/RES/60/147 dated December 16, 2005 “*Rehabilitation [of victims of gross violations of international human rights law and serious violations of international humanitarian law] should include medical and psychological care as well as legal and social services*”³. To establish that the resolution applies to the case of servicemen released from captivity, one has to find out what exactly they have experienced in captivity and whether these acts fall under the definition of gross and serious violations.

According to the conclusions of the Maastricht Seminar “Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms”, the list of gross violations of human rights includes at least, the following: “*genocide, slavery and practices similar to slavery, extrajudicial killings, torture and cruel, inhuman or degrading treatment, kidnapping, prolonged arbitrary detention...*”⁴. However, this document establishes only a minimum list of gross violations. Other violations of human rights can be gross and systematic, based on their scope and extent.⁵

The list of serious violations of international humanitarian law is more clearly defined. According to the III Geneva Convention relative to the Treatment of Prisoners of War (1949), the serious violations towards the POWs are the following: “*... wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, compelling a prisoner of war to serve in the forces of the hostile Power, or wilfully depriving a prisoner of war of the rights of fair and regular trial prescribed in this Convention ...*”.

While the very fact of taking POWs is not a crime from the point of view of the international humanitarian law⁶, persons held in the captivity of the so-called DPR/LPR are highly likely to be subjected to gross violations of human rights and international humanitarian law.

Among 78 POWs interviewed by the coalition “Justice for peace in Donbas”⁷ for the study “Surviving hell”, 68 faced cruel treatment, 51 - experienced torture, 45 of the captives had bodily injuries as a consequence of torture. While these data were not obtained through a survey with a random sample, they indicate the facts of severe violations and, consequently, the need for rehabilitation of victims.

Thus, this publication is focused on actions taken by the government aimed at provision of medical aid and psychological rehabilitation to the captives released from the self-proclaimed DPR/LPR.

3 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law A/RES/60/147 dated December 16, 2005

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/496/44/PDF/N0549644.pdf?OpenElement>

4 Conclusions of the Maastricht seminar “ Study concerning the right to restitution, compensation and rehabilitation for victims of gross violations of human rights and fundamental freedoms ”
http://hrlibrary.umn.edu/demo/van%20Boven_1993.pdf

5 On the definition of gross and large-scale violations of human rights as international crimes see: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G93/140/28/PDF/G9314028.pdf?OpenElement>

6 From the point of view of the national legislation, the persons captured by the militants of the self-proclaimed DPR/LPR may be considered hostages, not POWs. See report “Total impunity in the ATO area”: <http://helsinki.org.ua/articles/uhspl-prezentuvala-doslidzhennya-totalna-bezkarnist-v-zoni-ato-rozsliduvannya-vbyvstv-ta-znyknen/>

7 Surviving hell: Testimonies of witnesses on places of illegal Detention in Donbas
<http://library.khpg.org/index.php?id=1451396568>

2. Medical and psychological aid to the captives: What is guaranteed by the national law

The National Human Rights Strategy signed by the President in 2015 envisages the establishment “*the effective system of social - including psychological - rehabilitation of the released persons and their families*”. The Strategy relates both to the civil hostages and POWs.

The national law does not envisage a special procedure for the treatment of servicemen who were taken POW. The ATO participants released from captivity can rely on medical aid based on obtaining the status of combatant according to the Law of Ukraine “On the status of veterans of war, guarantees of their social protection”. The status of combatant⁸ enables its holder to access the following benefits:

- Free medicine;
- Priority access to dental prosthetics;
- Free rehabilitation at sanatoriums;
- Annual medical examination;
- Priority service in hospitals and priority hospitalization;
- Temporary incapacity benefit equal to 100% of previous earnings regardless of the employment history.

In addition to the privileges related to access to medical aid, the Law envisages a 75% discount for utility payments, free use of public transport and other benefits for the combatants.

Moreover, the persons “...who became disabled due to injury, concussion, crippling or disease during military service...”, according to the Law of Ukraine “On the status of veterans of war, and guarantees of their social protection” are recognized as war veterans. In addition to the benefits mentioned above, the war veterans are entitled to free use of utility services (100% discount), priority access to housing, and so forth.

De jure obtaining these statuses does not require any actions from servicemen. To ensure the status of a combatant for the servicemen, the commanders of the respective military units have to submit the necessary documents to the departmental commission within a month. The departmental commission reviews the documents within another month and transfers them to the interdepartmental commission if there is a need to clarify certain details. After review by the interdepartmental commission, the documents are sent to the HR department of the Ministry of Defense, Security Service of Ukraine and other bodies to assign the status of combatant to the applicant⁹.

De facto this process is rather lengthy, while the captives need treatment immediately after the release. Thus, treatment is commonly provided on the basis of the certificate of direct participation in the anti-terrorist operation¹⁰, which is usually issued for the person to obtain the status of combatant. Moreover, the persons responsible for the exchange of POWs may refer them to the military hospitals for treatment and medical examination. In this case, treatment is provided on the general basis, as for the servicemen injured in action.

⁸ The Law of Ukraine “On the status of the combat veterans and guarantees of their social protection”, <http://zakon3.rada.gov.ua/laws/show/3551-12/page2>

⁹ Details on the procedure of obtaining the status of combatant and benefits for the ATO participants are provided in the brochure «Benefits and guarantees for the Anti-terrorist operation participants», <http://ato.rv.ua/images/documents/pilgi.pdf>

¹⁰ Resolution of the Cabinet of Ministers of Ukraine “On approval of the Procedure for providing the status of combatant to the persons who defended the independence, sovereignty and territorial integrity of Ukraine and directly participated in the anti-terrorist operation and its support” <http://zakon3.rada.gov.ua/laws/show/413-2014-%D0%BF#n31>



A nurse helps a soldier during physical therapy at Irpin military hospital.
Photo by Andrei Pungovschi

Source: Andrei Pungovschi. <http://newirin.irinnews.org/ukraines-wounded-warriors>

Thus, even though the mechanisms of treatment of the released servicemen do exist, the vagueness of their legal status may cause problems with the recording of the injuries received in captivity and timely treatment. As a result, some servicemen fail to receive necessary treatment or are unable to use all the benefits envisaged by law, including those ensured by the status of a war veteran. We review such cases below in more detail.

As for psychological rehabilitation, the special conditions for former POWs are

also missing. The released captives may apply for rehabilitation on the general basis as combatants.

According to the Decree of the President of Ukraine “On additional measures of social protection for the anti-terrorist operation participants” dated 18 March 2015, the Cabinet of Ministers was assigned to “consider the matter of increasing the number of psychologists in the facilities that provide rehabilitation to the participants of anti-terrorist operation”. Moreover, the funding of these facilities had to be increased. Besides, according to the Decree, the Cabinet of Ministers had to “consider the matter of creating regional centers for psychological rehabilitation and treatment to provide specialized psychological assistance to the anti-terrorist operations participant...”. Yet the legislative acts that should regulate the provision of psychological assistance to the ATO participants are currently non-existent.

Psychological rehabilitation is carried out on the basis of the programs approved on the local level. Accordingly, in different oblasts, the conditions of provision psychological rehabilitation may differ. As mentioned above, it is currently provided based on the status of the combatant in sanatoriums where the ATO participants are entitled to the free rehabilitation. The referrals to these facilities are provided by the Centers for the social services for the family, children, and youth (CSSFCY) or the Departments of labour and social protection (DLSP). This line of activity is one among many for CSSFCYs and DLSPs. Thus, psychological assistance to the persons released from captivity is provided unsystematically and ultimately depends on the existence of legislative acts on local level that would assign the function of psychological rehabilitation to the Centers. For example, in Vinnytsya oblast, where there is a decree of the Oblast State Administration on social assistance to the ATO participants, the oblast-level CSSFCY reported to have provided psychological assistance to 318 families of the persons mobilized to the ATO in 2015, which equals to 32% of those who claimed the need for support¹¹. At the same time, the information about the provision of psychological assistance to the ATO participants or their families is missing altogether from the 2015 report of Dnipropetrovsk CSSFCY¹².

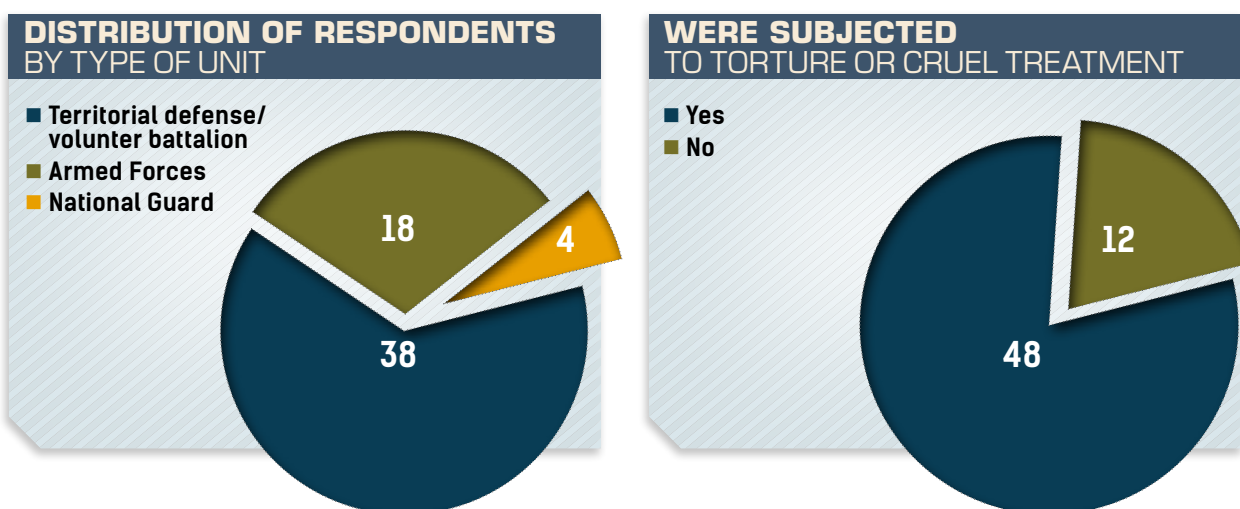
11 Activities of the Centers for the social services for family, children and youth of Vinnytsya oblast in 2015 <http://vin-ocsssdm.com.ua/docs/ZvitCSSSDM2015.pdf>

12 Analytical report on the activities of the Centers for the social services for family, children and youth of Dnipropetrovsk oblast in 2015 http://www.docsssdm.dp.gov.ua/Sourse/http/Socwork/zvit_2015.pdf

3 Data and methodology

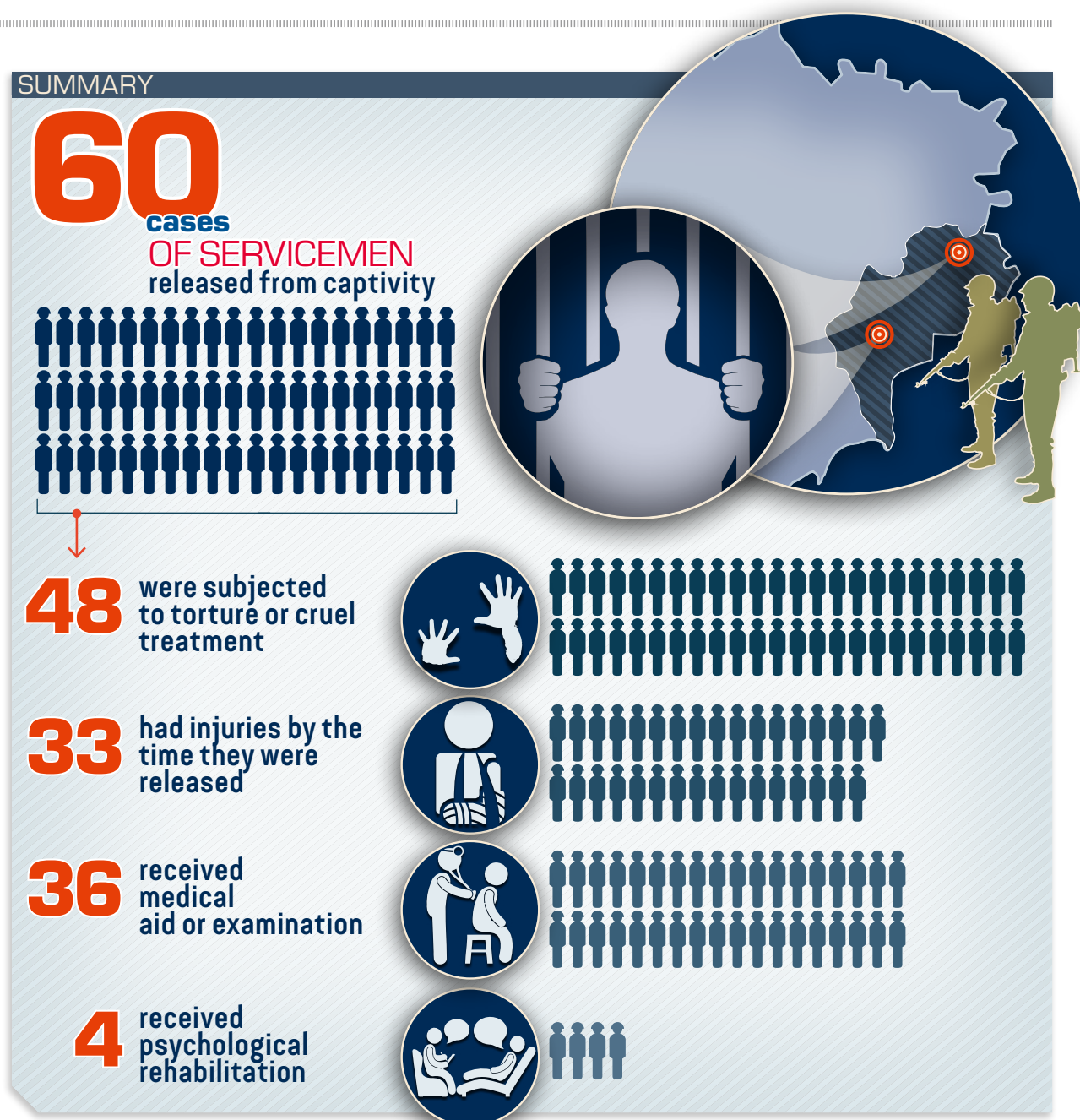
For the analysis, we selected 60 cases of the servicemen who had been held in the captivity of the self-proclaimed DPR/LPR. Half of them – 30 cases – are the applications to the European Court of Human Rights from the servicemen who were held in captivity, which were supported by the Kharkiv Human Rights Protection Group. Another 30 cases were selected from more than 100 interviews with the servicemen that were conducted by the Documentation Center of the Ukrainian Helsinki Human Rights Union. Among the applications and interviews, we selected those that contained the information on treatment provided to servicemen upon release. Moreover, if such information was present, we recorded whether psychological rehabilitation was provided. Additionally, we recorded if the captives had bodily injuries by the time of release. We recorded both the injuries from military actions and the injuries from torture in captivity. The scope of this analysis is limited only to serious injuries and traumas, such as bone fractures, bullet or shell fragment wound, post-concussion syndrome and so forth. While the majority of servicemen have been beaten in captivity (which can be regarded as acts of torture by intensity and consequences), it is important to distinguish such injuries from the more serious traumas that constitute a threat to person's health and require more urgent medical attention.

Since the cases were not selected randomly, we cannot infer from our data about all servicemen that have been held in captivity. That is why the results below are presented both in absolute numbers and in percentages. However, the findings illustrate certain common scenarios that occur after POWs are released, and can serve as a basis for future studies to assess how comprehensive the actions of the state are. Besides, cases of injured persons that did not receive medical care (or even a medical examination) after the release point to a problem that requires urgent intervention.



The sample is distributed as follows: the majority of persons (38 or 63.3%), information on whom was available, served in the territorial defense battalions (TDB) and volunteer battalions¹³. 18 among the surveyed (30%) served in Armed Forces of Ukraine. Four persons (6.6%) served in the National Guard of Ukraine (former Interior Troops). 41 person (68.3%) was taken POW during the battle of Ilovaysk in August or early September 2014. 11 of the persons surveyed (18.3%) were taken POW during the battle of Debaltsevo in February 2015. Another 8 persons (13.3%) were captured during other episodes of the armed conflict in the Eastern Ukraine. 48 persons (80%) experienced torture or cruel treatment (beating, imitation of execution by firing squad, and so forth). 33 persons out of 60 (55%) were released from captivity with the injuries, received during fighting or caused by torture.

¹³ These units were formed according to the mixed principle: some of the servicemen were drafted, some of them were volunteers. Later some battalions were incorporated into structures of Armed Forces of Ukraine. Thus, these units cannot be classified as purely volunteer battalions.



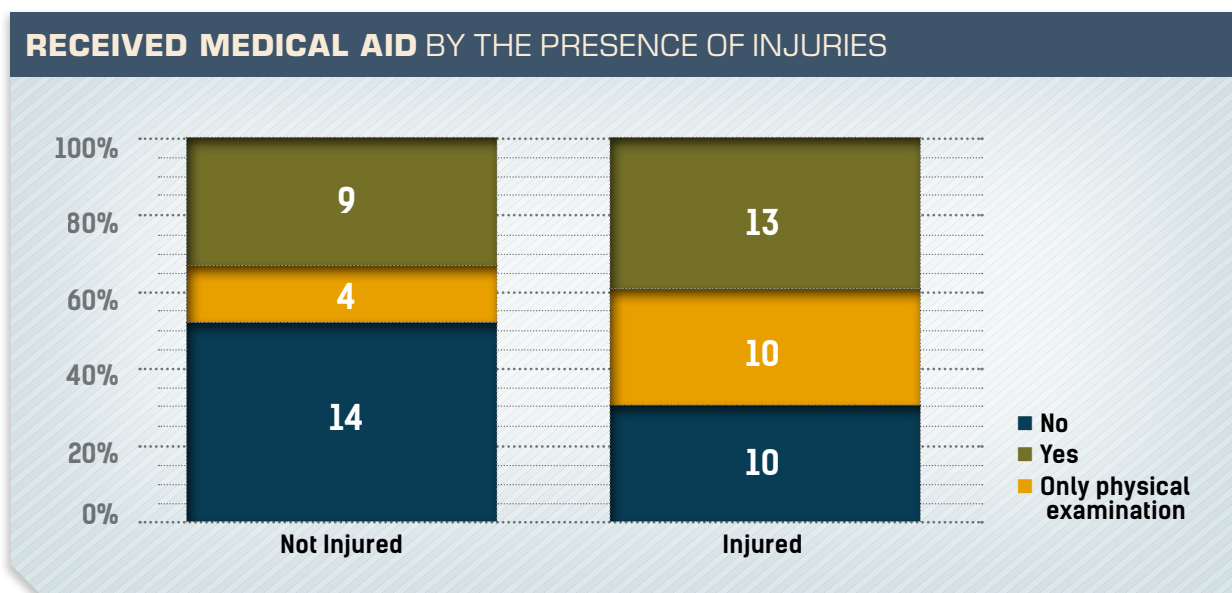
4. Provision of medical aid and psychological rehabilitation

The data show that the amount of care received by the servicemen after the captivity varies depending on the circumstances of their release. Some persons released in the course of centralized exchanges were then referred in an organized manner for treatment in military hospitals immediately after the release:

“At night ... we arrived in Kharkiv, to Air Force University, where we were accommodated on campus. They provided us food and a change of clothes, medical assistance” (M-1, soldier of a territorial defense battalion, released February 2015).

While some servicemen were able to pass only a physical examination, some did not mention the possibility of obtaining medical care after release from captivity at all. In total, 36 respondents out of 60 (60%) mentioned the possibility to pass a physical examination or receive treatment immediately after the release.

Often those persons who had no serious injuries or traumas could refuse emergency physical examination after release from captivity, immediately departing on vacation to visit their relatives. However, there were problematic cases when injured persons did not receive appropriate assistance after the release. We found 10 such cases in our sample (17%).



The lack of examination or failure to provide treatment immediately after the release made it difficult for the servicemen to prove the fact that the injuries were inflicted in captivity:

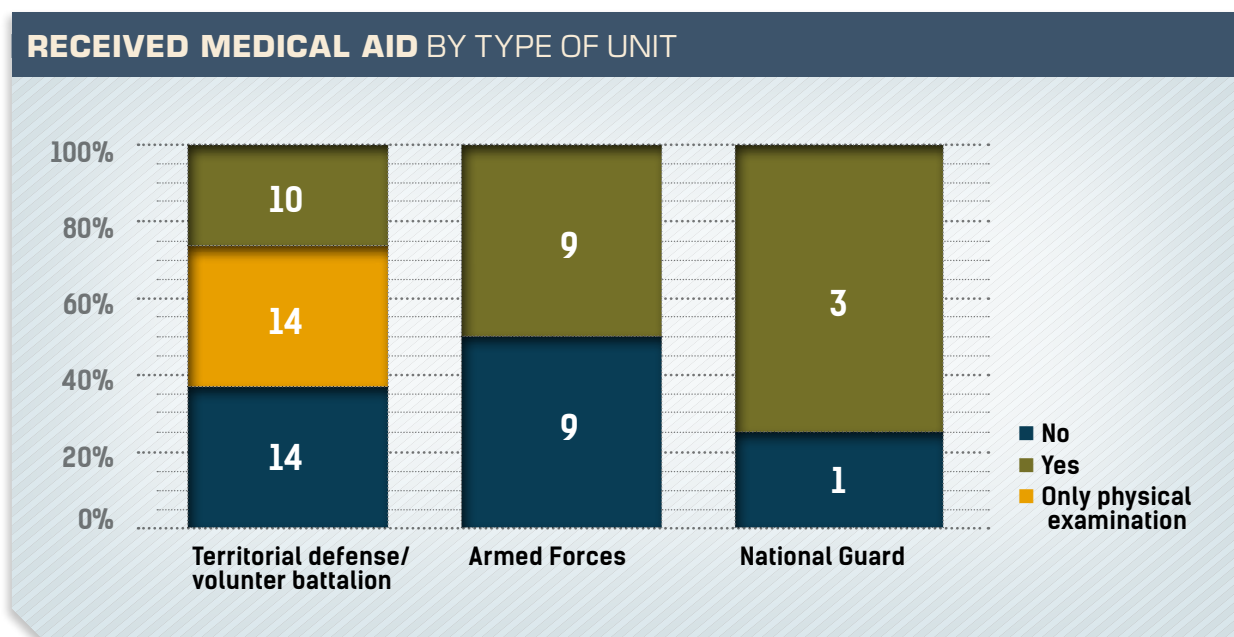
“They refused to accept me for examination from the military unit; they issued an incorrectly filled document to me. At the hospital... they refused to admit me and to listen to my complaints. They did give me a sick leave, I have a certificate from the military medical commission, but that document was not taken into consideration anywhere in the hospital.” (G-1, soldier of the territorial defense battalion released in December 2014).

According to the testimony of another soldier of a territorial defense battalion, immediately after capturing his group, Russian troops and DPR militants started beating him on the head with rifle butts until he lost consciousness. The victim had his jaw broken, and he could not eat in captivity. After the exchange, he received no medical care because there were more seriously injured people in his group. After passing the examination and receiving medical care the fact that he had his jaw broken in the captivity was not reflected in his medical records.

“In Kharkiv, we were accommodated for a night in Air force [University] ... more attention was given to more seriously injured persons. When I came home, I went to a hospital. I had a jaw fracture. [The medical records] did not describe that these traumas were inflicted between Donetsk and Luhansk oblasts and it happened during the period when I served in ATO.” (B-1, soldier of a territorial defense battalion, released in February 2015).

Further treatment is always an issue after release and primary medical examination. As noted above, the access to free medicine and priority hospitalization is conditional upon having the status of combatant or war veteran. Thus, for proper treatment it is crucial to record the fact that the injury has been received in military actions or captivity.

Since representatives of the territorial defense battalions and Armed Forces units were usually exchanged together, and the majority of respondents received medical aid immediately after the release from captivity, there is no difference in the proportion of volunteers and Armed Forces servicemen who were unable to receive proper treatment. However, these results do not rule out the possibility that the representatives of volunteer battalions could encounter difficulties later, while obtaining the status of combatant.



So far we can conclude that the state provided an opportunity to receive medical care for 36 (60%) of the captives after their release, while the remaining 24 (40%) of them did not receive medical aid. Thus, we put forward a question whether the state provides proper medical aid for the people in the ATO area, and we hope to conduct an in-depth assessment of this issue jointly with the Ministry of Healthcare and the Ministry of Defense.

The problem of access to psychological rehabilitation is even more acute, only 4 individuals out of 60 (6.7%) reported having passed some form of psychological rehabilitation course.

“After the captivity, I was offered to visit a psychologist for rehabilitation. I talked with a psychologist a bit. I am more or less ok now, but other guys had a hard time recovering after the captivity.” (F-1, soldier of a territorial defense battalion, released in February 2015).

Rare cases of provision of psychological rehabilitation make an unusually stark contrast with the almost universal need for it. There were some cases when persons who were not wounded and have been held in captivity for a short period of time needed no immediate medical aid. However, each respondent faced some form of cruel treatment and threats of execution.



“From time to time they told us to get ready for the execution (in the morning or at night). We constantly heard personal insults towards us; we were accused of the deaths of civilians during hostilities, including deaths of elderly people, women and children, destruction of infrastructure on the territory of DPR and LPR, with the allegations that we were doing this for money. Moreover, we heard threats against our families, whose home addresses became available to the enemy after our interrogations and confiscation of the documents.” (C-1, soldier of the territorial defense battalion released in April 2015).

“Fear haunted me. “017” and “Kent” [codenames of the militants] said that we would not be released or exchanged. They said there was no sense to do it because we would go to war again. They also took our passports and military IDs; they threatened that if they capture us again, they will execute us on the spot.” (L-1, serviceman of the Armed Forces, released in September 2014).

Several factors complicated the process of receiving psychological support.

Firstly, it is the lack of information on how to obtain it. Secondly, it is the unsatisfactory performance of the responsible commanders of military units, since in our sample only 2 respondents out of 60 (3%) were referred for psychological rehabilitation by their military units. Thirdly, psychological rehabilitation is often associated with stigma because of widespread negative stereotypes against those who apply for such assistance. Thus, a suggestion to go through a psychological rehabilitation course might even scare the servicemen off. Fourthly, the current system of application for psychological assistance mainly implies obtaining the status of combatant. This procedure is unacceptably complicated, as aid is needed urgently for the released; the lack of it can cause severe repercussions for the whole society.

Overall, we have sufficient grounds to suggest that the number of persons applying for psychological assistance might be much higher if the access was simplified. Removal of such barriers should be included in the agenda of the Government of Ukraine and supported by the civil society.

5. Conclusions

- 1.** In the interests of persons affected by the captivity, the Government of Ukraine should accelerate the establishment of an interdepartmental working group for documentation and investigation of violations of international humanitarian law and human rights law in the temporarily occupied territory of Ukraine and the ATO area. Such group should involve government representatives, law enforcement officials and representatives of international organizations. Creation of the group is envisaged the National Human Rights Strategy (paragraph 3 of the section “Ensuring the right to life”). The draft law has been awaiting approval from the executive authorities for the unreasonably long time.
- 2.** The Ministry of Healthcare, Ministry of Social Policy, and Ministry of Justice should take actions envisaged by the Resolution of the UN General Assembly “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law” (A/RES/60/147 dated December 16, 2005). In particular, they should ensure that the victims of the armed conflict are treated with special care to avoid psychological re-traumatization in the course of legal and administrative proceedings designed to provide justice and reparation (Section VI “Treatment of victims”).
- 3.** We recommend the international organizations and NGOs to carry out a public evaluation of the activities of the Ministry of Defense in the provision of medical and psychological aid to the staff that currently serves or previously served in the ATO area.